

REMARKS

In response to the Office Action dated September 17, 2008, Applicants respectfully request reconsideration. Claims 1-17 were previously pending in this application. In this paper, claims 1, 2, 12, and 13 have been amended, claims 3-11 and 14-17 have been canceled without prejudice or disclaimer, and new claims 18-22 have been added. As a result, claims 1, 2, 12, 13, and 18-22 are pending for examination with claim 1 being the sole independent claim. No new matter has been added.

Rejections under 35 U.S.C. §112

Claims 1-17 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

The Office Action states that it is unclear if "frequency of apneas per unit time and an apnea duration time" is one parameter or two. Applicants clarify that "frequency of apneas per unit time and an apnea duration time" are two parameters and, accordingly, have amended claim 1 to recite "at least two respiratory related detection parameters including frequency of apneas per unit time and an apnea duration time."

In addition, the Office Action states that the claims are vague and appear to be method claims. Applicants respectfully disagree, but in an effort to address any concerns the Examiner may have in this regard, Applicants have amended claim 1 to clarify structural elements, namely, an apnea detector, a memory that stores a reference value, and a means for implementing a SAS feature.

Lastly, the Office Action states claims 1-17 are rejected for employment of parenthesis. Applicants have amended the claims to remove parenthesis.

Accordingly, withdrawal of the rejection of claims 1-17 under 35 U.S.C. §112, second paragraph, is respectfully requested.

Rejections Under 35 U.S.C. §102

Claims 1-17 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Bourgeois et al. (U.S. Patent No. 6,126,611).

Applicants have amended independent claim 1 to include a memory that stores respective reference values of the detection parameters, and a SAS feature allowing for preselection for each patient an ON or OFF mode as the SAS treating pacing mode. If the ON mode is selected, SAS treatment is performed for a time period and at a SAS treating pacing rate preset for each patient, and after an elapse of the preset time period, the SAS treating pacing rate is *successively reduced to shifting into a basic rate or a rest rate*. If the OFF mode is selected, a SAS treatment is performed at a SAS treating pacing rate preset for each patient for a time period while SAS is being detected by said apnea detector, and at a time when measured results of the detection parameters of said apnea detector become not higher than the reference values, the SAS treating pacing rate is *successively reduced to shifting into a basic rate or a rest rate*.

Applicants point out that Bourgeois does not disclose a memory that stores a reference value of the detection parameters which is determined by a physician for each patient.

In addition, Bourgeois does not disclose implementation of a SAS feature that allows for preselection for each patient an ON or OFF mode as the SAS treating pacing mode so that effective SAS treatment may occur with less strain to the treated patient. In particular, application of SAS treating pacing for a longer time period may strain the treated patient. Such implementation of a SAS feature, not found in Bourgeois, that allows for preselection of an ON or OFF mode enables the physician to provide a more effective treatment of SAS considering the capacity of the patient to withstand the SAS treatment.

Moreover, the means for implementing a SAS feature makes it possible to *successively reduce SAS treating pacing rate to shifting into a basic rate or a rest rate* after the SAS treatment. In contrast, Bourgeois states that the mode switch to a higher cardiac pacing rate can be abrupt or gradual, and that this pacing is withdrawn after the SAS treatment (see col. 5, lines 56-61). From Fig. 3 of Bourgeois, it is evident that withdrawal of the higher cardiac pacing rate occurs abruptly as compared with the gradual shift into a basic rate or a rest rate that is shown in Fig. 2 of the present application.

As a result, because Bourgeois does not teach or disclose all of the features of independent claim 1, the rejection of this claim should be withdrawn. Because each of claims 2, 12, 13, and 18-22 depend either directly or indirectly from independent claim 1, the rejections of each of these claims should also be withdrawn.

Accordingly, withdrawal of the rejection of claims 1-17 under 35 U.S.C. §102(b) is respectfully requested.

General Comments on Rejections of Dependent Claims

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicants do not, however, necessarily concur with the interpretation of any dependent claim as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any dependent claim is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue, or comment set forth in the Office Action does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Furthermore, nothing in this paper should be construed as intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify any concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' representative at the telephone number indicated below to discuss any outstanding issues relating to the allowability of the application.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, please charge any deficiency to Deposit Account No. 25/2325, under Docket No. K0522.70000US00.

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